

The Honorable Ricardo S. Martinez

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

COLUMBIA RIVERKEEPER, IDAHO)
RIVERS UNITED, SNAKE RIVER)
WATERKEEPER, PACIFIC COAST)
FEDERATION OF FISHERMEN’S)
ASSOCIATIONS, and THE INSTITUTE)
FOR FISHERIES RESOURCES,)
)
Plaintiffs,)
 v.)
)
SCOTT PRUITT, et al.)
)
Defendants.)
_____)

No. 2:17-cv-00289-RSM

**DECLARATION OF LAUREN
GOLDBERG**

I, LAUREN GOLDBERG, state and declare as follows:

1. My name is Lauren Goldberg, and I make this declaration based on my own personal knowledge.

2. I have worked as Columbia Riverkeeper’s (“Riverkeeper”) Staff Attorney since graduating from Lewis and Clark Law School in 2008. This litigation falls squarely within Riverkeeper’s mission: to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Riverkeeper was founded to establish one consistent voice working to protect the Columbia River from a “whole river” perspective—in recognition that poor water quality or habitat conditions anywhere in the Columbia River

1 basin affect salmon and steelhead populations and fisheries both upriver and downriver. As part
2 of the international Waterkeeper Alliance (“Waterkeeper”), Riverkeeper shares a model of
3 grassroots citizen involvement, a science-based approach to conservation and environmental
4 protection, and a determination to enforce key environmental laws, with a special emphasis on
5 the Clean Water Act.

6 3. Many of Riverkeeper’s staff and members are connected by a common interest
7 and concern for salmon and steelhead, which use the Columbia and lower Snake Rivers
8 throughout their lifecycles. Salmon—and subsistence, recreational, and commercial salmon
9 fishing—are integral parts of these rivers, their history, and the communities and lives of local
10 residents. Riverkeeper’s staff and members are working to protect and restore strong salmon runs
11 in the Columbia and Snake, in part by protecting salmon species from poor water quality,
12 including toxic pollution and warm water temperatures. Through this work, Riverkeeper also
13 protects its members’ interests in fishing for, consuming, viewing, studying, and otherwise
14 enjoying salmon and steelhead from the Columbia River and its tributaries.

15 4. Over the past nine years, my job at Riverkeeper has involved protecting the
16 people and fisheries of the Columbia River basin from threats posed by pollution, habitat
17 degradation, and poor water quality. Much of this work is approached and accomplished through
18 the legal framework of the federal Clean Water Act. Applying, and strengthening, the Clean
19 Water Act’s programs to protect and restore our nation’s waterways was a founding principle of
20 the Waterkeeper movement; it continues to be a central focus of Riverkeeper’s work.

21 Riverkeeper regularly engages in processes and decisions about implementing all aspects of the
22 Clean Water Act that impact the Columbia River and its tributaries, including: setting water
23 quality standards to protect people and aquatic life; listing waterways on Oregon and
24 Washington’s 303(d) lists of impaired waterways; developing Total Maximum Daily Load

1 analyses to address water quality standard violations; commenting on and challenging permits
2 issued under Sections 401, 402, and 404 of the Clean Water Act to ensure compliance with water
3 quality standards; and citizen enforcement of violations of the Clean Water Act and Clean Water
4 Act permits.

5 5. Over the past two years, I and other Riverkeeper staff and volunteers have
6 devoted hundreds of hours to researching the causes of, and advocating for solutions to, high
7 water temperatures in the Columbia and Snake Rivers. These efforts included extensive
8 document review; legal, scientific, and factual research; public records requests; meetings and
9 discussions with state and federal agencies and scientists; and the facilitation and oversight of
10 expert scientific and technical research related to the temperature of the Columbia and Snake
11 rivers. Riverkeeper and its members have provided written and oral comments regarding the
12 effects of warm water temperatures in the Columbia and Snake rivers to federal agencies, both
13 informally and as part of formal administrative decision-making processes such as the
14 Endangered Species Act Biological Opinion and Environmental Impact Statement for the
15 Federal Columbia River Power System (“FCRPS BiOp”). These agencies and bodies included
16 the U.S. Environmental Protection Agency (“EPA”), National Marine Fisheries Service, U.S.
17 Army Corps of Engineers (“Corps”), the Bureau of Reclamation (“BOR”), and the Bonneville
18 Power Administration. At the state level, Riverkeeper has filed comments on draft Clean Water
19 Act permits in Oregon and Washington during recent years protesting that the temperature of
20 facilities’ wastewater violates state water quality standards for temperature. I also participated in
21 or facilitated several community meetings and training sessions to empower and educate
22 Riverkeeper members and the public about temperature problems in the Columbia and Snake
23 Rivers and the impacts on salmon and steelhead.

24 6. Based on my review of numerous expert reports, research papers, agency

1 comments, and EPA’s own data and admissions, including the 2003 draft temperature TMDL for
2 the Columbia and Snake Rivers, human impacts on the Columbia and Snake rivers—primarily
3 the creation of large, relatively shallow reservoirs; the operation and configuration of the dams’
4 fish passage systems; and climate change—result in summer water temperatures that are
5 detrimental to salmon and steelhead migration and survival. For instance, according to the Fish
6 Passage Center, in 2015, more than 96% of the returning population of endangered Snake River
7 sockeye salmon died prematurely in the Columbia and Lower Snake rivers because warm water
8 in the reservoirs and the dams’ fish passage structures prevented these fish from going upstream.
9 *See Fish Passage Center, Requested Data Summaries and Actions Regarding Sockeye Adult Fish*
10 *Passage and Water Temperature Issues in the Columbia and Snake Rivers*, pp. 2–3 (2015).

11 Without action to address water temperatures, similar fish kills will likely re-occur in the future.
12 EPA has acknowledged that “[t]he need to lower water temperature becomes more critical as the
13 Pacific Northwest Region continues to address and mitigate climate change.” *See EPA, Review*
14 *of Draft of NOAA Fisheries’ 2015 Sockeye Salmon Passage Report*, p.1 (2016).

15 7. For waterways like the Columbia and lower Snake Rivers that consistently fail to
16 meet water quality standards, Congress prescribed TMDLs as the first step in fixing the problem.
17 TMDLs assign pollution “loads” to each pollution source, such that the total amount of pollution
18 in a waterway will not violate water quality standards. For example, the 2003 draft Temperature
19 TMDL for the Columbia and lower Snake Rivers assigned temperature pollution loads to each
20 dam/reservoir combination that, if implemented, would have resulted in the attainment of water
21 quality standards—or, at least, a reduction in the summertime temperatures of these waterways.

22 8. While TMDLs are not self-executing, the loads assigned to individual pollution
23 sources in TMDLs become legally binding in various ways. With respect to the federally
24 operated dams on the Columbia and lower Snake, the load allocations in a TMDL could become

1 legally binding upon the Corps or BOR via the federal facilities clause of the Clean Water Act,
2 33 U.S.C. § 1323. Additionally, as EPA suggested, the load allocations could be incorporated
3 into the FCRPS BiOp as Reasonable and Prudent Measures required under the Endangered
4 Species Act to avoid jeopardizing the survival of endangered salmon and steelhead. Even if the
5 Corps and BOR were not legally bound to achieve the precise temperature load reductions
6 prescribed in a TMDL, the careful study and temperature reduction goals developed by EPA in
7 the TMDL process would assist and inform the Corps and BOR's ongoing efforts to improve fish
8 passage and survival in the Columbia and Snake Rivers. Accordingly, the TMDL sought through
9 this litigation would likely result in tangible improvements to water temperature.

10 9. In addition to my role as Riverkeeper's staff attorney, I regularly eat, and serve
11 my children, salmon and steelhead caught in the Columbia River and its tributaries. I enjoy the
12 ability to consume healthy, delicious salmon and steelhead that have been harvested locally by
13 my family members and friends in a sustainable manner. I estimate that I eat salmon caught in
14 the Columbia or its tributaries once a week. My family primarily catches and consumes summer
15 steelhead and summer (or "upriver bright") Chinook salmon. After the 2015 fish kills, the federal
16 Fish Passage Center warned that those runs—in addition to sockeye—are threatened by warm
17 summer water temperatures. I am concerned that, if unaddressed, warm water temperatures in the
18 Columbia and its tributaries will degrade my family's opportunity to catch and eat Columbia
19 River salmon.

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
21 and correct to the best of my knowledge.

22 Executed this 28th day of August, 2017, at Hood River, Oregon.

23 /s/ Lauren Goldberg
24 LAUREN GOLDBERG

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: August 30, 2017

/s/ Bryan Hurlbutt
BRYAN HURLBUTT